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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
CHAWLA, JYOTI	
ART UNIT	**PAPER NUMBER**
1781	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/577,812	DOMAZAKIS, EMMANOUIL	
	Examiner	Art Unit	
	JYOTI CHAWLA	1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 March 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *3/29/2010*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicant's submission and amendments filed on March 29, 2010 have been entered. Claims 1 and 3 have been amended. Claims 1-4 are examined in the application.

Information Disclosure Statement

The information disclosure statement filed March 29, 2010 with copies of non-patent literature publications has been received and entered.

Claim Rejections - 35 USC § 112(First paragraph)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4 are once again rejected under 35 U.S.C. 112, first paragraph, for the reasons disclosed in the previous office action, because the specification, while being enabling for incorporation or "addition of olive oil" and temperature range (See Publication, paragraph [0037], does not reasonably provide enablement for "liquid olive oil being emulsified and physically entrapped within the resulting mixture", as included in step b) of amended claims 1 and 3. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims. In the instant case, there is no recitation of the limitation "liquid olive oil being emulsified and physically entrapped within the resulting mixture" has been found. Thus although applicants' disclosure has support for addition of olive oil and mixing of meat but no support has been found of the active step where the oil is emulsified or physically entrapped as instantly claimed by the applicant. Correction is required.

For the purposes of examination applicant's recitation of "liquid olive oil being emulsified and physically entrapped within the resulting mixture" will be regarded as a result of mixing after addition of liquid olive oil to the meat mixture.

Claim Rejections - 35 USC § 112(second paragraph)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants' recitation of "liquid olive oil being emulsified and physically entrapped within the resulting mixture" in claims 1 and 3 renders the claim indefinite. It is unclear as recited as to what is encompassed by said phrase. It is not clear whether an emulsifier is added to the meat and oil mixture or mere act of adding olive oil with animal fat as claimed causes the olive oil to be emulsified and physically entrapped. Further, the phrase is not clarified by the claim and the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Thus, as claimed it is unclear as to what causes the olive oil to be emulsified and whether the combined addition of olive oil and animal fat is responsible for the emulsification of olive oil or some other ingredient (i.e., an emulsifier) or another method step is responsible for "liquid olive oil being emulsified and physically entrapped within the resulting mixture". Correction and /or clarification is required.

For the purposes of examination applicant's recitation of "liquid olive oil being emulsified and physically entrapped within the resulting mixture" will be regarded as a result of mixing after addition of liquid olive oil with animal fat to the meat mixture.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(A) Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloukas et al (Meat Science Vol.45, No.2, 133-144 1997) hereinafter Bloukas, in view of the combination of McKee et al (US 2060422), hereinafter Mckee and Domazakis (WO 02/065860).

References and rejections are incorporated herein and as cited in the office action of 12/24/2009.

Applicant's recitation of "liquid olive oil being emulsified and physically entrapped within the resulting mixture" in step b) of claim 1, has been noted, however, since the applicant has not specified any ingredients or positively recited any method steps that cause the olive oil to be emulsified and entrapped, addition of olive oil and animal fat as recited in step b) of claim 1, will be regarded as a result of mixing after addition of liquid olive oil with animal fat to the meat mixture. Bloukas teaches of addition of liquid olive oil (page 134, sausage formation, paragraph 2 and Page 135, lines 18-19 and Table 1). Bloukas teaches of addition of olive oil as a liquid as well as emulsified form (See page 135, lines 18-19), which satisfies the recited limitation.

Further regarding applicant's amendment of "liquid olive oil being emulsified and physically entrapped within the resulting mixture", applicant is referred to rejection under 35 USC 112 (first and second).

(B) Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloukas (Meat Science Vol.45, No.2, 133-144 1997), McKee (US 2060422) and Domazakis (WO 02/065860), further in view of Gryczka et al (US 4147807), hereinafter Gryczka.

References and rejections are incorporated herein and as cited in the office action of 12/24/2009.

Applicant's recitation of "liquid olive oil being emulsified and physically entrapped within the resulting mixture" in step b) of claim 1, has been noted, however, since the applicant has not specified any ingredients or positively recited any method steps that cause the olive oil to be emulsified and entrapped, addition of olive oil and animal fat as recited in

step b) of claim 1, will be regarded as a result of mixing after addition of liquid olive oil with animal fat to the meat mixture. Bloukas teaches of addition of liquid olive oil (page 134, sausage formation, paragraph 2 and Page 135, lines 18-19 and Table 1). Bloukas teaches of addition of olive oil as a liquid as well as emulsified form (See page 135, lines 18-19), which satisfies the recited limitation.
Further regarding applicant's amendment of "liquid olive oil being emulsified and physically entrapped within the resulting mixture", applicant is referred to rejection under 35 USC 112 (first and second).

Response to Arguments

Applicant's arguments with respect to the amended claims dated 3/29/2010 have been fully considered but are not persuasive.

i) Applicant alleges that "Bloukas clearly discourages the practice of direct oil addition, for Bloukas teaches that direct oil addition leads to products with undesirable characteristics" (remarks, of 3/29/2010, page 6, lines 13-14), however, the applicant has provided no details to support the allegation. Thus, applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

ii) Applicant argues that prior art reference to Mckee is not relevant as prior art (Pages 5-6). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the instant case Bloukas teaches of a method of making sausage products comprising olive oil. Bloukas in view of the combination of Mckee, Domazakis

and Gryczka are being relied upon to show the conventionality of the method steps. Specific arguments against references are addressed below:

a) Applicant argues that **McKee** reference can not be combined with Bloukas as "McKee reference aims to develop a lighter, brighter color of fresh meat" and "Aim of Mckee does not show any similarity to the claims of the present application" (Remarks, page 5, last paragraph). These arguments are not persuasive because in response to applicant's argument that McKee is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Bloukas and Mckee are concerned with methods of making sausage products from meat, which is the same field of endeavor as the claimed invention. Further, Bloukas teaches a method for the preparation of sausage or other meat-based products, which is characterized by the incorporation of olive oil. Bloukas teaches that meat is frozen at -20 °C (page 134, sausage formation, paragraph 1), and frozen meat is cut and then it is mixed with salt, sugars, preservative, auxiliary salts and cultures (Page 135, paragraph 1, lines 9-10 and paragraph 2), i.e., the frozen meat as taught by Bloukas is cut and mixed with spices in frozen state, or in the temperature range claimed by the applicant. McKee is relied upon to provide further evidence that specific temperature of -4 °C as claimed by the applicant was well known for processing of meats, especially to make sausages. Mckee teaches of processing meat at a temperature ranging from 25-32 °F (i.e., -3.8 to 0 °C), which falls in applicant's recited temperature range of -4 to -2 °C. (Page 1, Column 2, lines 50-55 and page 2, Column 1, lines 1-6). Thus, meat processing at below freezing temperatures was well known at the time of the invention, as taught by Bloukas and McKee. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Bloukas and process the meat below the freezing temperature specifically ranging from 25-32 °F (i.e., -3.8 to 0

°C), as taught by Mckee. One of ordinary skill in the art would have been motivated to process the meat product in the recited range at least for the purpose of maintaining meat in a frozen state for a desirable color and texture in the processed meat product. Thus, applicant's arguments that Mckee is not applicable and not combinable with Bloukas are not persuasive.

b) Applicant further argues that in **McKee** "no mention is made of any side effects regarding the stability of the resulting meat paste" (Remarks, page 6, paragraph 1).In response to applicant's argument that Mckee does not teach stability of meat paste by grinding or comminuting at a temperature below freezing, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

c) Applicant's argument that **Mckee** does not teach stability of meat paste by grinding or comminuting at a temperature below freezing, (Remarks, page 6, paragraph 1), as discussed above in response ii). Further in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., stability of meat paste by grinding or comminuting at a temperature below freezing) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

d) Applicant's argument against **Bloukas in view of Mckee** is that "neither Bloukas nor Mckee teach the addition of sodium chloride at the beginning of the mixing/chopping process in the preparation of meat paste" (Remarks, page 6, paragraph 3, lines 6-7). First of all Bloukas teaches addition of salts such as sodium nitrite, sodium ascorbate (Bloukas, page 135, lines 8-17). Secondly applicant is directed to the claim as recited,

which recites "salt" and not "sodium chloride" as argued. Since salt is added by Bloukas at the beginning of the chopping /mixing, applicant's argument is not persuasive. Further in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "sodium chloride at the beginning of the mixing/chopping process in the preparation of meat paste") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

iii) Applicant's main argument against **Domazakis** is based on the cooked emulsion sausage produced by Domazakis as opposed to fermented sausage of Bloukas and the applicant (See remarks, page 7, last paragraph and page 9, paragraph 2). This argument is not persuasive because, Domazakis is relied upon to provide evidence to the conventionality of application of vacuum while stuffing sausages and the suitable vacuum applied (See rejection of claim 1 step d). Domazakis teaches conveying the sausage product to a filling machine (forming machine), where it is formed in desired shape and stored, with a simultaneous vacuum application at 1000 mbar as recited by the applicant in claim 1step d (See page 3, lines 32-33). Further, in response to applicant's argument that Domazakis is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Domazakis and Bloukas are both making sausages that are typically stuffed in casings under vacuum conditions and therefore fall in the same field of endeavor as the applicant, which makes them relevant as prior art. Further whether the sausage product is fermented after being stuffed or cooked and processed after being stuffed, the stuffing method or conditions applied will be similar to ensure adequate stuffing and removal of air. Therefore, it would have been obvious to one of ordinary skill in the art at the time of

the invention to modify Bloukas, in view of Domazakis and apply vacuum in the range of 1000 mbar. One of ordinary skill would have been motivated to modify Bloukas and specifically apply the level of vacuum as taught by Domazakis at least for the purpose of obtaining desirable amount of compactness in the packaged meat product.

Thus, applicant's arguments have been fully considered but are not persuasive and the rejection of claims 1-4 is maintained for the reasons of record.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JC/
Examiner
Art Unit 1781

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1781